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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,017	10/30/2006	Manfred Breunig	31606/L50151	8538
4743 7590 07/12/2010 MARSHALL, GERSTEIN & BORUN LLP 233 SOUTH WACKER DRIVE 6300 WILLIS TOWER CHICAGO, IL 60606-6357				
EXAMINER				
BASICHAS, ALFRED				
ART UNIT		PAPER NUMBER		
3743				
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07/12/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/579,017

**Applicant(s)**

BREUNIG ET AL.

**Examiner**

Alfred Basichas

**Art Unit**

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 08 June 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 8-14, 26, 32-34 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 8-14, 26, 32-34 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 8-14, 26, 33, and 36, as understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Kohlstrung (6,410,890), which shows all of the claimed limitations. For example,

8. A cooking device comprising: an inner casing having a cooking chamber 1 with at least one fluid inlet 12 and at least one fluid outlet 18; a ventilation device 2 having at least one fan 4 in the inner casing, at least one drive shaft (see at least fig. 1) for the fan, and at least one motor 6 for the drive shaft, the ventilation device for the circulation of at least a part of at least one fluid at least in the inner casing (see at least fig. 1); a recirculation circuit for the fluid with (see at least fig. 1) at least one reservoir 15 for the at least intermittent accommodation of at least the fluid 20 with at least one fluid inlet and at least one fluid outlet (see at least fig. 1); a filling- and/or charge-amount-monitoring device 16 for the reservoir; and a control or regulation device 14 cooperating with at least one of the ventilation device and the filling- and/or charge-amount-monitoring device, such that the filling- and/or charge-amount-monitoring device cooperates with the ventilation device for the determination of at least one parameter characteristic for the amount of fluid incident on the fan (see at least col. 4, lines 32-37).

Art Unit: 3743

9. The cooking device according to claim 8, wherein the motor cooperates with the control- or regulation device (see at least col. 4, lines 32-37).

10. The cooking device according to claim 8, further comprising: at least one pumping device 14 for circulating at least a part of the fluid at least in the inner casing.

11. The cooking device according to claim 8, wherein the characteristic parameter can be determined by evaluation of at least one of a rotation speed, a rotation speed fluctuation, a power consumption, a power consumption fluctuation, a current consumption and a current consumption fluctuation (see at least col. 4, lines 32-37).

12. The cooking device according to claim 10 wherein in the determination of the characteristic parameter, a pulsing of the pumping device can be taken into consideration (see at least col. 4, lines 32-37).

13. The cooking device according to claim 8, wherein the fluid includes at least one of water in the liquid form (see at least fig. 1), water in the vapor form, and a washing liquor.

14. The cooking device according to claim 8, wherein the reservoir is provided in one of the inner casing (inherent), a quenching chamber (see at least fig. 1 - conduit leading from the drain to the valve) and a boiler of a steam generator.

26. The cooking device according to claim 8, wherein the filling- and/or charge-amount-monitoring device includes the ventilation device 17.

33. The cooking device according to claim 10, wherein the pumping device cooperates with the control- or regulation device to adjust at least one of a pump output and a pulsing of the pumping device (see at least col. 4, lines 32-37 and claim 9).

34. The cooking device according to claim 12, wherein the pulsing of the pumping device is taken into consideration by evaluating a time span between a first reduction of the rotation speed after turning on the pumping device and a first increase

of the rotation speed after turning off the pumping device (inherently capable of performing the stated function).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kohlstrung (6,410,890), which discloses substantially all of the claimed limitations. Nevertheless, Kohlstrung fails to specifically recite,

32. The cooking device according to claim 9, wherein the motor is an electrically commutated motor.

Official Notice is given that the use of electrically commutated motors with impellers is old and well known in the art. Such an arrangement has the clear and obvious benefit of providing for manufacturing considerations such as availability and cost. Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the claimed motor into the invention disclosed by Kohlstrung, so as to provide for availability and cost.

### ***Response to Arguments***

6. Applicants' arguments with regard to the rejected claims have been considered, but are not deemed fully persuasive.

a. Applicant asserts that the filling- and/or charge-amount-monitoring device for the reservoir and the control or regulation device constitute one or more electronic devices. Nevertheless, the claims are given their broadest reasonable interpretation and as such the pump and valve of Kohlstrung read thereon. Additionally, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Further, Kohlstrung

clearly recites the optional use of a "measuring and control system...for control of a cleaning regimen" (see at least col. 1, lines 63-67).

b. The examiner's assertion of Official Notice is taken to be admitted prior art in view of applicants' non-traversal of the assertion. MPEP 2144.03. The examiner appreciates applicants' waiver and efforts to expedite prosecution of the instant invention by avoiding unnecessary deliberations of well known aspects of the art.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Basichas whose telephone number is 571 272

Art Unit: 3743

4871. The examiner can normally be reached on Monday through Friday during regular business hours.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Tech Center telephone number is 571 272 3700.

July 12, 2010

/Alfred Basichas/  
Primary Examiner, Art Unit 3743